



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

SEP 13 2005

Ref: 8ENF-W-NP

CERTIFIED MAIL 7003 2260 0002 0331 4928
RETURN RECEIPT REQUESTED

Dan Passolt
Registered Agent
Homeland Developers, Inc.
101 Harwood Drive
West Fargo, North Dakota 58078-0800

Re: Administrative Order under the Clean
Water Act 33 U.S.C. §§ 308 and 309(a)

Dear Mr. Passolt:

On July 21, 2005, the United States Environmental Protection Agency (EPA) observed the Elmwood Court Development in West Fargo, North Dakota regarding compliance with the Clean Water Act and its storm water regulations applicable to construction sites. At the time of the observations, EPA inspectors identified alleged storm water violations, including failure to implement best management practices ("BMPs") as required under your permit. Accordingly, the EPA has filed an Administrative Order ("Order") which requires you to come into compliance with the storm water regulations and your permit. The Order specifies the nature of the violations under the Clean Water Act, 33 U.S.C. § 1251, et seq. (the "CWA") for your construction activities at the Elmwood Court Development. The authority for such action is provided to EPA under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3). The Order describes the actions necessary for Homeland Developers, Inc. to achieve compliance with the CWA.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any Orders issued thereunder. Section 309 of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(b), (c), (d), and (g)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an Order issued pursuant to the CWA (33 U.S.C. § 1368).

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, U.S. EPA Small Business Resources, containing information on compliance assistance

resources and tools available to small businesses, is enclosed with this Order. The inclusion of this information sheet does not necessarily mean that EPA has determined that your organization is a small business. SBREFA does not eliminate your responsibility to comply with the requirements of this Order.

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, or the enclosed Order, the most knowledgeable people on my staff regarding these matters are Darcy O'Connor for storm water requirements at (303) 312-6392, and Alicia Hoegh for legal issues at (303) 312-6876.

Sincerely,

for Eddie A. Sierra
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures: Administrative Order
Certification Statement
SBREFA information sheet

cc: Tina Artemis, Regional Hearing Clerk
Dennis Fewless, NDDH

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2005 SEP 13 PM 2:55

Docket No. CWA-08-2005-0050

FILED
EPA REGION VIII
HEARING CLERK

Homeland Developers, Inc.
340 8th Street West
PO Box 800
Fargo, North Dakota 58078

Respondent.

ADMINISTRATIVE ORDER

INTRODUCTION

1. This administrative order is authorized by Congress in sections 309(a)(3) & 308 of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (CWA or the Act), 33 U.S.C. §§ 1319(a)(3) & 1318.
2. The undersigned EPA official has been properly delegated the authority to issue this order.
3. EPA alleges that Respondent has violated the Act and/or regulations and requires Respondent to achieve and maintain compliance, as more fully explained below.

FINDINGS OF FACT AND LAW

4. In order to restore and maintain the integrity of the nation's water, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402, 33 U.S.C. §1342.
5. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges into navigable waters, subject to specific terms and conditions.
6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires that any discharge of storm water associated with an industrial activity comply with the requirements of an NPDES permit.
7. As directed by section 402(p) of the Act, 33 U.S.C. § 1342(p), EPA has issued regulations that further define requirements for NPDES permits for storm water discharges. The regulations include those codified at 40 C.F.R. part 122.26.

8. EPA's regulations define discharges associated with industrial activity to include construction activity. 40 C.F.R. § 122.26(b)(14)(x).
9. EPA's regulations require each person who discharges storm water associated with industrial activity to obtain coverage under either an individual permit or a promulgated general permit. 40 C.F.R. § 122.26(c).
10. EPA authorized North Dakota to assume primary responsibility for issuing NPDES permits for discharges in that state. 40 FR 28663, July 8, 1975.
11. The State of North Dakota issued a general NPDES permit authorizing discharges of storm water associated with construction activities, if done in compliance with the conditions of the permit. The permit is no. NDR10-0000. The version currently in effect was issued effective October 11, 2004 and will expire on September 30, 2009.
12. The permit requires, among other things, that a person discharging pollutants implement best management practices ("BMPs"). BMPs include structural controls (such as silt fences) and management practices (such as a dedicated concrete washout area and street sweeping).
13. Respondent is a North Dakota corporation and is doing business in the State of North Dakota.
14. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
15. As a "person," the Respondent is subject to the requirements of the Act and 40 C.F.R. part 122.
16. Respondent owns and/or has been engaged in construction activities at a facility called Elmwood Court Development located within Section 18, Township 139N, Range 49W in West Fargo, North Dakota.
17. Respondent conducted construction activities within a part of a larger common plan of development or sale whose total land disturbing activities totaled five acres or greater.
18. Respondent is therefore engaged in an "industrial activity" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).
19. The runoff and drainage from the Respondent's facility is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).

20. Storm water contains "pollutants" as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
21. Storm water, snow melt, surface drainage and runoff water leaves the Respondent's facility and flows into the City of West Fargo's Phase II municipal separate storm sewer system (MS4), a waters of the U.S.
22. The City of West Fargo's MS4 discharges into the Cass County Drain 21 which discharges to the Sheyenne River.
23. The Sheyenne River is a "navigable water" and "waters of the United States," as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2, respectively.
24. The storm water runoff from Respondent's facility is the "discharge of a pollutant" as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.
25. Respondent's construction activity at its facility is a "point source" as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
26. On June 2, 2005, Respondent submitted a notice of intent ("NOI") for coverage of storm water discharges from all of its small construction sites (land disturbance of equal to or greater than one acre and less than five acres) by North Dakota Permit no. NDR10-0000 and was issued a NPDES permit No. NDR10-1220.
27. On July 21, 2005, authorized EPA employees observed the facility from a public street for compliance with the Act and EPA's regulations.
28. The July 21, 2005 observations revealed that Respondent was not implementing Best Management Practices ("BMPs") to minimize environmental impacts from storm water discharges.
29. The July 21, 2005 observations revealed that Respondent's concrete wash out was leaving the facility into the adjacent street.
30. The July 21, 2005 observations revealed that there was sediment build up in the adjacent street.

COUNT 1

31. The permit requires Respondent to implement BMPs to minimize the impact of Respondent's construction activities on waters of the United States. At the time of the

July 21, 2005 observations, adequate BMPs were not in place and no BMP was in place to prevent concrete wash out and sediment build up in the adjacent street.

32. Respondent's failure to implement BMPs is in violation of the permit and therefore constitutes violations of the Act. 33 U.S.C. § 1319, § 1342(p).

ORDER FOR COMPLIANCE

Respondent is ordered to perform the following actions:

33. Respondent is ordered to comply fully with all requirements of North Dakota Permit no. NDR10-0000, including but not limited to all requirements relating to developing and implementing a Storm Water Pollution Prevention Plan ("SWPP plan"), implementing all BMPs required by the permit or the SWPP plan, inspecting its construction site and documenting the inspections, and submitting a Notice of Termination. In addition, the Respondent shall:

- a. no later than ten (10) days after receiving this Order, submit a NOI for large construction activity for your construction activity at the Elmwood Court Development to the North Dakota Department of Health ("NDDH") at the following address:

North Dakota Department of Health
Division of Water Quality
1200 Missouri Ave., Rm. 203
PO Box 5520
Bismarck, ND 58506-5520

- b. no later than ten (10) days after receiving this Order, provide documentation to EPA that the violations identified above have been corrected;
- c. submit copies of the all Site Inspection Records ("SIRs") quarterly to EPA, with each report to be due 10 days after the end of each calendar quarter (October 10, 2005, January 10, 2006, April 10, 2006, etc.) for the life of the construction project or until written notice is given by EPA that the submissions can cease, with each quarterly report to include all SIRs for that quarter;
- d. no later than fifteen (15) days after receiving this Order, submit to EPA the SWPP plan;
- e. no later than thirty (30) days after receiving this Order, submit to EPA documentation that the NOI for large construction activity has been submitted to NDDH and permit coverage has been obtained; and
- f. no later than thirty (30) days after receiving this Order, submit written documentation, including photographs, that best management practices have been

developed and implemented as required by the permit and detailed in the SWPP plan, including, but not limited to, erosion control and good housekeeping practices.

ADDITIONAL PROVISIONS

34. Within forty-five (45) days of receipt of this Order, provide the following information:
(Please note that question 34.c applies to you if you are the owner of property at this site; question 34.d applies if you are a contractor working for the owner of property at this site)
- a. The number of employees across all facilities and operations owned by your company. Please identify the number of employees working in the State of North Dakota.
 - b. The nature of your involvement at the Elmwood Court Development (e.g., owner, developer, builder, general contractor, subcontractor, etc.). If your company was both an owner and builder, please indicate that here. If your company's involvement was other than as an owner, such as a builder, general contractor or sub-contractor, please provide the name, address, phone number for the company/person with whom you contracted.
 - c. If your involvement was as an owner, identify the number of acres of the Elmwood Court Development your company purchased and the condition of the property/lot(s) at the time you assumed ownership (i.e., was the property undisturbed, graded, etc.). Include a copy of the contract for sale, deed of sale, and any existing photographs of the property. Include the date the photographs were taken and the name of the photographer, if known.
 - d. If your involvement was as a builder, general contractor or sub-contractor, please identify the number of acres at the Elmwood Court Development your company had day-to-day control over, and the condition of the property at the time you assumed control (i.e., was the property undisturbed, graded, etc.). Include a copy of the contract your company had with the owner of the property/lot(s) and any existing photographs of the property. Include the date the photographs were taken and the name of the photographer, if known.
 - e. Provide the date when ground disturbing activities began on the portion of the Elmwood Court Development that you owned or had day-to-day control over, and the date when the area was finally stabilized (if applicable) or sold.
 - f. Describe your responsibilities related to storm water discharges at the Elmwood Court Development, including, but not limited to, the construction, installation

and/or maintenance of BMPs at the site. Provide a copy of any contracts or written agreements relating to your responsibility for storm water discharges.

- g. If you hired or worked with other companies or people for the purpose of storm water permitting, compliance, or inspections at the Elmwood Court Development, provide a list of those companies or people, and a copy of all contracts or other documents related to such work.
- h. Provide copies of all storm water self-inspections conducted at the site. If inspections were not completed, please state so in your response. If inspections were conducted but no report was generated, provide a list of when, where and by whom self-inspections were conducted.
- i. Describe any communications, verbal or written, you had with NDDH and/or the City of West Fargo regarding storm water requirements. Provide copies of the written correspondence and all existing written notes of any verbal communication.

Your response must be accompanied by a certificate that is signed and dated by a duly authorized corporate officer. The certification must state that the response is complete and contains all information and documentation available to you that is responsive to these questions. A sample Statement of Certification has been included with this Order.

OTHER PROVISIONS

- 35. EPA regulations protect confidential business information. See 40 C.F.R. part 2, subpart B. If Respondent asserts a business confidentiality claim for information required to be submitted under this order, Respondent shall provide such information only to EPA, and EPA will determine if the information the Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both EPA and the North Dakota Department of Health as specified in this Order, and EPA may make the information available to the public without further notice to the Respondent.
- 36. All written notices and reports required by this Order shall be sent to the following address:

Darcy O'Connor (8ENF-W-NP)
U.S. EPA Region 8
NPDES Enforcement Unit
Office of Enforcement, Compliance
and Environmental Justice
999 18th Street, Suite 300
Denver, Colorado 80202-2466

37. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.
38. This Order does not constitute a waiver or modification of the terms and conditions of North Dakota Permit no. NDR10-0000, which remains in full force and effect, or of any other legal responsibility or liability of the Respondent.
39. This Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes EPA to seek civil penalties of up to \$32,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319; 40 CFR part 19.

Date: SEP 13 2005

By: *Carrie A. Sierra*
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

IN THE MATTER OF: Homeland Developer Inc., Respondent.

CERTIFICATE OF SERVICE

I certify that the attached amended administrative order was sent this day in the following manner to the addressees below:

Original and one copy hand delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection
Agency (8RC)
Region 8
999 18th Street
Denver, CO 80202-2405

Copy by certified mail, return receipt requested to:

Dan Passolt
Registered Agent for
Homeland Developers, Inc.
101 Harwood Drive
West Fargo, North Dakota 58078-0800

9-13-05
Date

Juanita Walston

STATEMENT OF CERTIFICATION

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

Signature

Date

Printed Name

Official Title



Printed on Recycled Paper



U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers: <http://www.epa.gov/clearinghouse>

Pollution Prevention Clearinghouse
<http://www.epa.gov/opptintr/library/ppicindex.htm>

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs:
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone and Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
<http://www.epa.gov>

Small Business Assistance Program
<http://www.epa.gov/ttn/sbap>

Office of Enforcement and Compliance Assurance
<http://www.epa.gov/compliance>

Compliance Assistance Home Page
<http://www.epa.gov/compliance/assistance>

Office of Regulatory Enforcement
<http://www.epa.gov/compliance/civil/index.html>

Office of Site Remediation Enforcement
<http://www.epa.gov/compliance/cleanup>

Innovative Programs for Environmental Performance
<http://www.epa.gov/partners>

Small Business Ombudsman
www.sba.gov/ombudsman

